

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMG SERVICES, INC., et al,

Defendants, and

PARK 269 LLC, et al.,

Relief Defendants.

Case No.: 2:12-cv-536-GMN-VCF

ORDER

INTRODUCTION

Before the Court is Defendants The Muir Law Firm LLC and Timothy J. Muir, Esq.'s Motion to Seal the Declaration of Timothy J. Muir, and Exhibit A and C attached to the Opposition to Plaintiff's Motion for Preliminary Injunction (ECF No. 71). Plaintiff Federal Trade Commission (hereinafter "FTC" or "Commission") filed a Response (ECF No. 96) and the Defendants filed a Reply (ECF No. 117).

BACKGROUND

The FTC brings the instant action to halt a web of Internet-based payday lenders that allegedly deceive consumers about the costs of their loans and allegedly engage in unlawful debt collection practices. The FTC is currently seeking a preliminary injunction to enjoin Defendants' alleged violation of the Federal Trade Commission Act, the Truth in Lending Act and the Electronic Fund Transfer Act.

The instant motion seeks to seal the Declaration of Timothy J. Muir (Ex. 1 attached to Opposition to Plaintiff's Motion for Preliminary Injunction, ECF No. 70) and Exhibits A and C

(ECF Nos. 70–1 and 70–2.)

DISCUSSION

A. Legal Standard

Federal courts have historically recognized a “strong presumption in favor of access” to judicial records. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Accordingly, “[a] party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the ‘compelling reasons’ standard That is, the party must articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process.” *Id.* at 1178–79 (citations and internal punctuation omitted).

There are exceptions whereby judicial records may be sealed without meeting the “compelling reasons” standard, such as: (1) documents that have “traditionally been kept secret for important policy reasons,” including grand jury transcripts and certain warrant materials, and (2) documents attached to non-dispositive motions. *See e.g. id.* at 1178 –79; *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134–35(9th Cir. 2003). The second exception is intended to exclude documents attached to discovery motions. *See Kamakana*, 447 F.3d at 1179 (“We have, however, carved out an exception to the presumption of access to judicial records for a sealed discovery document attached to a non-dispositive motion”) (internal quotations and citations omitted). The discovery exception exists because “the public has less of a need for access to court records attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action.” *Id.* (internal quotations omitted).

Motions for a preliminary injunction, while not a dispositive motion, go to the merits of the case and are not merely “tangentially related” to the cause of action. Therefore, when considering a motion to seal, some courts treat a motion for preliminary relief as a dispositive

1 motion. *See, e.g., Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-
 2 GWF, 2011 WL 1630338 at *5 (D. Nev. April 29, 2011) (“The Court finds that requests for
 3 preliminary injunctive relief should be treated as dispositive motions for purposes of sealing
 4 court records.”); *B2B CFO Partners, LLC v. Kaufman*, No. CV 09-2158-PHX-JAT, 2010 WL
 5 2104257 (D. Ariz. May 25, 2010) (using the standard for a dispositive motion and holding that
 6 the party “must show compelling reasons to file under seal” in determining whether to lodge a
 7 preliminary injunction under seal); *Dish Network LLC v. Sonicview USA, Inc.*, No. 09-CV-1553,
 8 2009 U.S. Dist. LEXIS 63429, at * 16-17 (S.D. Cal. Jul. 23, 2009) (holding that a motion for a
 9 temporary restraining order and seizure was a dispositive motion for purposes of sealing court
 10 records); *Yountville Investors, LLC v. Bank of America, N.A.*, No. C08-425RSM, 2009 WL
 11 411089 at *2 (W.D. Wash. Feb. 17, 2009) (“A motion for a preliminary injunction is treated as a
 12 dispositive motion under these rules.”); *but see In re Nat’l Sec. Agency Telecomm. Records*
 13 *Litig.*, No. 06-1791, 2007 WL 549854 at *3 (N.D. Cal. Feb. 20, 2007) (finding that a preliminary
 14 injunction is a non-dispositive motion but noting that the seal was appropriate in part because
 15 only some information had been redacted, while other information had been released); *Reilly v.*
 16 *MediaNews Group Inc.*, No. C 06-04332, 2007 WL 196682, at *12 (N.D. Cal. Jan. 24, 2007)
 17 (applying the “good cause” standard in connection with documents attached to a temporary
 18 restraining order).

19 If the preliminary injunction motion is not treated as a dispositive motion, then the party
 20 seeking to seal the documents must make a “‘particularized showing’ under the ‘good cause’
 21 standard of Rule 26(c)” of the Federal Rules of Civil Procedure. *Kamakana*, 447 F.3d at 1180
 22 (internal citations omitted). Rule 26(c) protects trade secrets and other confidential research,
 23 development, or commercial information. Fed. R. Civ. P. 26(c)(G). A party moving for a
 24 document to be sealed must demonstrate “for each particular document it seeks to protect . . . that
 25 specific prejudice or harm will result if no protective order is granted.” *Foltz*, 331 F.3d at 1130.

1 “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do
2 not satisfy the Rule 26(c) test.” *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th
3 Cir. 1992) (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3rd Cir. 1986)).

4 This Court is persuaded by the reasoning of another District of Nevada case, *Selling*
5 *Source*, 2011 WL 1630338, and finds that it is proper to treat the preliminary injunction motion
6 as a dispositive motion and will therefore apply the compelling reasons standard to seal the
7 documents.

8 **B. Analysis**

9 **1. Declaration of Timothy J. Muir**

10 Defendants’ motion claims that Mr. Muir’s declaration “contains confidential and
11 proprietary information, trade secrets, and confidential commercial and business information
12 relating to Mr. Muir, the Muir Law Firm and his clients. Several of those clients are named in
13 this action. The Declaration details identity of clients, services performed for clients, corporate
14 and ownership structures of entities, the business methods and practices of one such client, Black
15 Creek Capital Corporation (“Black Creek”), and the purposes of payments to and from clients.”
16 (Motion to Seal 4:12–17, ECF No. 71.)

17 The FTC argues that Defendants have not put forth a good cause to seal the Declaration,
18 let alone a compelling reason to seal. The FTC argues that Defendants broad description that the
19 declaration contains confidential and proprietary information, trade secrets and confidential
20 commercial and business information does change the fact that what is identified is actually quite
21 ordinary. The only statement in the declaration regarding the “ownership structure” of his clients
22 is that a particular person owns a particular company. (Muir Decl. ¶ 15, ECF No. 69.) The only
23 discussion of a client’s “business methods and practices” was a general description of the types
24 of business that the client engages in. (*Id.* at ¶15.) FTC argues that none of these things are
25 “confidential,” “proprietary,” or “trade secrets.” FTC asserts that the declaration describes

1 services performed for clients, and the payments received, in a general way and that much of the
2 information is already documented in public documents that Mr. Muir signed. Even the owner of
3 the company that Mr. Muir is attempting to conceal has admitted his sole ownership of that
4 company in his own public filing. (*See* ECF No. 58.)

5 Defendants reply that the declaration does disclose confidential information, such as his
6 monthly rental obligations, detailed discussions of the nature of legal services provided for
7 clients, and the types and amount of expenses advanced on behalf of clients. (*See* Muir Decl.).
8 The declaration also contains a detailed discussion of the complaint to the FTC, which is attached
9 at Exhibit C.

10 Having reviewed the declaration, the Court finds that it should not be sealed. The
11 information contained in the declaration is quite general, including generalized statements about
12 the type of legal work Mr. Muir does for his clients. Even though Defendants argue that the
13 types and amounts of expenses advanced on behalf of his clients is disclosed, this information is
14 very general and there is only one specific dollar amount listed with regard to those services.
15 This dollar amount however is still stated in very general terms. Defendants argue in their Reply
16 that sealing is justified in this case when it will help avoid public scandal, the circulation of
17 libelous statements or otherwise infringe a defendant's fair trial rights. *See Kamakana*, 447 F.3d
18 at 1179. However, Defendants fail to demonstrate how the information contained in the
19 declaration will contribute to this problem. Instead, Defendants make the point that this case is
20 already publicized by the FTC's press release. The declaration, if anything, would correct or
21 defend against any of the "misrepresentations" that Defendants claim were in the press release.

22 Accordingly, the Court will not grant the motion to seal the declaration. However, the
23 Court will allow the current declaration to remain under seal and allow Defendants to file a
24 redacted copy of the declaration, removing the information regarding Exhibit C for the reasons
25 explained below in section 3 of this Order.

1 **2. Written Consent of the Shareholders of Black Creek Capital Corporation**

2 Defendants assert that the Written Consent of the Shareholders of Black Creek which is
3 attached as Exhibit A to the Muir Declaration, should be sealed for the same reasons as the
4 declaration.

5 The FTC asserts that the reasons given by Defendants to seal the Written Consent filed as
6 Exhibit A are deficient in the same manner as the reasons given to seal the Muir Declaration are
7 deficient. The FTC argues that the document contains no particular business plans or trade
8 secrets but that it merely states certain tasks that a corporate officer is permitted to do. The FTC
9 also points out that the Defendants do not state any harm that would result from this ordinary
10 shareholder consent entering the public record. Finally, the FTC claims that the substance of
11 Exhibit A is already disclosed in Defendants' publically available Opposition to the FTC's
12 Motion for a Preliminary Injunction. (*See* Muir Opp. to PI pg. 22-23, ECF No. 69.)

13 The Court does not find compelling reasons to seal Exhibit A. Therefore, the Court will
14 Order the exhibit to be unsealed.

15 **3. Letter Dated August 18, 2011 to the Office of Inspector General for the FTC**

16 Defendants also argue that the Letter of the Inspector General of the FTC attached as
17 Exhibit C to the Muir Declaration should be sealed because it contains confidential information
18 relating to a complaint to the FTC regarding a violation of federal law. Defendants argue that the
19 complaint arises from sensitive and confidential banking records and financial documents of
20 certain defendants in this action that the FTC obtained pursuant to a civil investigative demand
21 ("CID"). Defendants argue that before such information can be used or disclosed in a court
22 proceeding, federal law requires that parties' interest in the confidential information be advised
23 and provided the opportunity to obtain a protective order. *See* 16 C.F.R. § 4.10(g).

24 Defendants sent the letter to the Office of the Inspector General of the FTC as they
25 believed that federal law was violated when some sensitive documents turned up in other

1 litigation. The letter itself provides significant factual details regarding the defendants and the
2 confidentiality of the documents. The heading of the letter states, the content and exhibits of the
3 letter are "Confidential – Not Subject to Freedom of Information Act."

4 The FTC does not oppose the sealing of Exhibit C because it claims the documents do not
5 pertain to any factual or legal issues in this case and are entirely irrelevant.

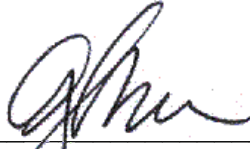
6 The Court finds that Exhibit C should remain sealed. The parties took careful steps to
7 protect this document by marking it "Confidential."

8 **CONCLUSION**

9 **IT IS HEREBY ORDERED** that Defendants The Muir Law Firm LLC and Timothy J.
10 Muir, Esq.'s Motion to Seal (ECF No. 71) is **GRANTED in part and DENIED in part**.

11 Defendants shall file a redacted copy of the Muir Declaration in accordance with this
12 Order and an unsealed copy of Exhibit A. Exhibit C will remain filed under **SEAL**.

13 DATED this 15th day of August, 2012.

14
15
16 
17 _____
Gloria M. Navarro
United States District Judge